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**JAN 07 2010**

In re Application of :  
Eun-Kyung Lee, et al. :  
Application No. 10/758,136 : **DECISION ON PETITION**  
Filed: January 16, 2005 :  
Attorney Docket No. 030681-624 :

This is a decision on the petition, filed October 21, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of a prior-filed nonprovisional application under 37 CFR 1.78(a)(3).

The petition is not signed by a registered attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of John A. Castellano appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. A courtesy copy of this decision is being mailed to petitioner. However, if Mr. Castellano desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to satisfy item (1) above.

The reference was not submitted during the pendency of the later-filed application. In this regard, the present application became abandoned for a failure to timely reply to the non-final Office action of September 20, 2005. In view of the 1-month petition for extension of time filed January 20, 2006, the application became abandoned on January 21, 2006.

Before a petition under 37 CFR 1.78(a)(3) can be granted, applicant must first resolve the pendency issue in the later-filed application. See 37 CFR 1.78(a)(2)(ii). Then a renewed petition under 37 CFR § 1.78(a)(3) should be filed. No further petition fee is required.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

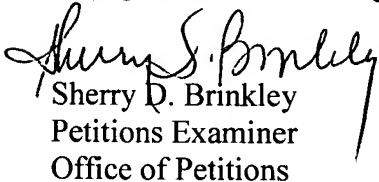
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions

cc:     JOHN A. CASTELLANO  
         P.O. BOX 8910  
         RESTON, VA 20195

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<sup>1</sup> [www.uspto.gov/ebc/efs\\_help.html](http://www.uspto.gov/ebc/efs_help.html) (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)